FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.51 OF 2005

M/s.Datapro Information Technology &
Ors.....Petitioners
Vs.
Rajeev Arora & Ors.....Respondents

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Mr.S.C. Naidu i/b. Ace Legal Consultants, for the Petitioenrs

Mr. Shailesh Shah with Mr. K.J. Hakkani & Mr. Yatin N. shah for Respondents

CORAM: F.I. REBELLO, J.
DATED : JANUARY 18, 2005

P.C.

. Rule. Heard forthwith.

Petitioners are aggrieved by the impugned order of the Additional District Judge, Pune dated 1st November, 2004 whereby he allowed the Appeal filed by the Respondent No.1 and set aside the order of the trial Court on Exhibit 5 in Regular Civil Suit No.118 of 2004. By the impugned order the learned Appellate Court restrained the Respondent No.2 herein who is the Defendant No.1 in the suit from accepting or acting upon the cheques or instructions issued on

behalf and for the Plaintiff No.2 Company which is Petitioner No.1 herein unless they are signed by the Respondent No.1 and the Petitioner No.3. Further the Defendant Nos. 2 and 4 were restrained from withdrawing any amount from Defendant NO.1 Bank by cheques or any other mode not jointly signed by the Plaintiff No.1 and Defendant No.3 till the decision of the suit. For the sake of clarify it may be mentioned that the Petitioner No.1 is Plaintiff No.2 in the suit. Plaintiff Nos. 2, 3 and 4 are Defendant Nos. 2, 3 and 4. The Respondent No.1 is the Plaintiff No.1 and the Respondent NO.2 is the Defendant No.1.

2. The controversy arises purportedly out of two meetings being held by the Board of Directors of the Petitioner No.1. It is the case of the Petitioners 2, 3 and 4 that the term of office of Respondent No.1 as Managing Director had come to an end and accordingly in the meeting held on 31st July, 2004 they passed a resolution revoking the earlier resolution authorising the Respondent No.1 to be joint signatory for cheques in a sum of Rs.1.00 lakh and above. On the other hand the stand of the respondent NO.1 herein is that at a meeting

held on 30th July, 2004 the earlier resolution authorising the Petitioner No.2 and Respondent No.1 to sign cheques jointly in a sum of Rs.1.00 lakh and above was modified in as much as all cheques for withdrawal of moneys from the account of Petitioner No.1 were to be signed jointly by Petitioner No.2 and Respondent No.3.

. Respondent No.1 as Plaintiff No.1 with Petitioner No.1 as Plaintiff No.2 had filed a suit against the petitioner Nos. 2, 3 and 4 and Respondent No.1 for various reliefs as set out in the plaint. An application was also moved for temporary injunction to restrain the petitioner No.1 from issuing cheques etc., in the manner set out in prayer clauses (i) and (ii) of the application for interim relief. That application came to be heard and decided by the learned trial Judge which by its order dated 11th October, 2004 was pleased to dismiss the application for temporary injunction. Miscellaneous Appeal preferred by the Respondent No.1 was allowed by the impugned order which is the subject matter of the present Writ Petition.

3. It is not necessary to go into the various aspects of the matter for the view to be taken. Suffice it to say that the proceedings are also pending before the Company Law Board in respect of the sister company of the petitioner No.2.

. The real controversy which both the Courts had to address for the grant of injunction was whether the meetings held either on 30th July, 2004 or on 31st July, 2004 are legal and valid. It is only after recording a finding on the legality and validity of the said meetings could either the application for injunction be rejected or allowed. From the impugned order one does not find that either the trial Court or the Appellate Court in the Miscellaneous Appeal have addressed themselves to this relevant aspect of the matter which would be crucial in so far as prima facie case is concerned.

4. The learned Counsel on behalf of the Respondent No.1 has sought to point out from the impugned order of the Appellate Court, that in fact the appellate Court had applied its mind to that issue. On consideration of paragraph 7 to which my attention has been drawn it is impossible

to hold that the Appellate Court addressed itself to that controversy. On the contrary the Appellate Court has proceeded on the footing that the respondent No.1 continues to be the Managing Director of the Company which fact is very much disputed by the petitioner Nos. 2,3 and 4, who contend that the term of office of the respondent No.1 has come to an end on the expiry of his five years period as Managing Director. It is not for me to go into that controversy considering what has been stated earlier.

5. Considering the fact that both the Courts below have not addressed themselves to the relevant issue required for consideration of application for temporary injunction it would be in the fitness of things that both the impugned orders of the trial Court dated 11th October, 2004 and of the Appellate Court dated 1st November, 2004 in Misc. Appeal No.348 of 2004 are set aside and the matter is remanded back to the trial Court for de novo consideration of the application for temporary injunction after hearing parties and pass appropriate order according to law.

6. Considering that the Company is a functioning Company it is desirable that the business of the company must go on. In these circumstances both the parties agree that the position existing before the resolution of 30th July, 2004 and 31st July, 2004 can be acted upon namely that for signing cheques of Rs.1.00 lakh and above both the petitioner No.2 and Respondent No.1 will sign jointly. It is made clear that there will be no self withdrawals.

7. Considering the nature of the controversy the trial Court is directed to dispose of the proceedings at any rate on or before 31st March, 2005.

. Personal Secretary of this Court to issue Authenticated copy of this order to the parties.

(F.I. REBELLO, J.)